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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

P. D. DUGGINS and wife LUCY TAYLOR DUGGINS,

Appellants,

v.

THE TOWN OF WALNUT COVE,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF NORTH CAROLINA

MOTION TO DISMISS OR AFFIRM

Roddey M. Ligon, Jr.
WOMBLE CARLYLE SANDRIDGE & RICE
Post Office Drawer 84
Winston-Salem, NC 27102
(919) 721-3600
Attorney for Appellee
March, 1984

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Supreme Court Rules, the Appellee Town of Walnut Cove (hereinafter "Town") respectfully moves the Supreme Court of the United States to dismiss the appeal of the Appellants, P. D. Duggins and wife (hereinafter "Duggins") on the grounds that the said appeal does not present a substantial federal question, and on the further grounds that the judgment below rests on an adequate non-federal basis; and, in the alternative, that the Court summarily affirm the decision of the North Carolina Court of Appeals on the basis that the decision of the North Carolina Court is in accord with all constitutional principles and requirements. In support hereof, the Town respectfully submits to the Court the following statement of the case and

argument in support of this motion.

STATEMENT OF THE CASE

The Zoning Ordinance of the Town of Walnut Cove permits mobile homes (as defined in the Ordinance) to be used as a dwelling on land located within a mobile home residential district (R-6MH), but not in a low density residential district (R-20). The Duggins sought to locate a mobile home in a R-20 district and were prohibited from doing so because of the Zoning Ordinance.

The Town Zoning Ordinance permits "site built" homes, constructed pursuant to the North Carolina Residential Building Code, to be built in the R-20 residential district. The Town Zoning Ordinance also permits modular homes, also required to be constructed in accordance with the North Carolina Residential Building Code, to be located in R-20 districts.

Mobile homes, prohbitied in R-20 districts, are not required to be constructed in accordance with the North Carolina Residential Building Code, but rather are constructed in accordance with federal mobile home standards.

The Town Zoning Ordinance defines a mobile home as follows:

> "A detached residential dwelling unit designed for transportation after fabrication on its own wheels and arriving at the site where it is to be occupied as a dwelling unit complete with necessary service connections and ready for occupancy, except for minor and incidential unpacking and assembly operations including, but not limited to, location on jacks or other temporary or permanent foundation, and connection to utilities. Recreational vehicles and modular homes shall not be considered mobile homes. All mobile homes manufactured after June 15, 1976, must comply with standards approved by the U. S. Department of Housing and Urban Development."

The Town Zoning Ordinance defines modular homes as follows:

> Any building or closed construction which is made or assembled in manufacturing facilities on or off the building site for installation on the building site other than mobile homes or recreational vehicles. Modular buildings shall comply with all codes applicable to residential construction.

The North Carolina Court of Appeals determined, as it had in previous cases, that there are sufficient differences between mobile homes and homes constructed on site in accordance with the State Residential Building Code, to justify a local governmental body in prohibiting the mobile homes from the municipality's most restrictive residential district, and thus found the Town Ordinance to be valid. 63 N.C.App. 684, 306 S.E.2d 186 (1983). The North Carolina Supreme Court denied

discretionary review. ____ N.C. ___, 310 S.E.2d 348 (1983). The Duggins have filed an appeal with this Court and submitted a Jurisdictional Statement which was received by the Town on March 5, 1984 pursuant to a Certificate of Service dated March 3, 1984.

The Town respectfully submits that this purported appeal does not present a substantial federal question and should be dismissed; or, in the alternative, that the issue presented was correctly determined by the North Carolina Court of Appeals and the decision of that Court should be summarily affirmed.

ARGUMENT

I. No Substantial Federal Question.

The Duggins, in their Jurisdictional Statement, advise the Court that zoning ordinances like that involved here deny

"to millions of Americans the only realistic home ownership alternative they have". This, of course, is an entirely false premise. The fact that it is a false premise is corroborated by the Jurisdictional Statement of the Duggins when they point out, on page 8, that 29% of the new single-family homes sold in this country in 1980 were mobile homes, and that 82% of the homes purchased for less than $40,000 were mobile homes. One must ask how the Duggins can contend that the Ordinance prohibits millions from being able to buy mobile homes at the same time that their assertion (not evidence in this case) is that almost one-third (1/3) of the homes purchased were in fact mobile homes.

The obvious truth of the matter is that municipalities (including Walnut

Cove) provide ample space within the municipality for the location of homes constructed in accordance with the Residential Building Code, and ample space for mobile homes. The fact that the space is not identical obviously does not mean that there is a deterring effect upon the purchase of one kind as opposed to the other kind.

In this case, there is considerable land within the Town of Walnut Cove zoned R-6MH in which the Duggins could locate and use their mobile home as a place of residence. They appear unwilling to use that land. Rather, they are insistent upon using land in the most restrictive residential district as the location of their mobile home. In short, their contention is that a municipality may not lawfully restrict the location of mobile homes

throughout the municipality; and, that an ordinance which prohibits them from placing their mobile home throughout the City, at any residential district of their choosing, somehow violates their constitutional rights. As the Town will discuss more fully hereinafter, there is no constitutional violation.

For purposes of determining whether or not the appeal raises a substantial question, we respectfully repeat our contention that the argument that the Ordinance denies home ownership to millions of people is simply not factually accurate. Thus, the bedrock upon which the Duggins rest their contention of substantiality simply does not exist. There is nothing in the Walnut Cove Ordinance that "denies a home ownership opportunity to persons

like the Duggins", and the statements of the Duggins to that effect appearing at various places in their Jurisdictional Statement are simply contrary to the facts. The Duggins may own a mobile home and may locate the same on numerous sites in the Town of Walnut Cove.

Further, we respectfully submit that this case involves no "fundamental" right guaranteed by the Constitution. As this Court stated in the case of Village of Belle Terre v. Boroas, 416 U.S. 1, 739 L.Ed.2d 798, 803, 94 S.Ct. 1536, 1542 (a case challenging the constitutionality of a zoning ordinance of the Village of Belle Terre, New York, restricting land use to one-family dwellings, and prohibiting occupancy of a dwelling by more than two unrelated persons as a "family" while permitting occupancy by any number of persons related by blood,

adoption or marriage):

> "It involves no 'fundamental right guaranteed by the Constitution, such as voting, Harper v Virginia Board, 383 US 663, 16 L Ed 2d 169, 86 S Ct 1079; the right of association, NAACP v Alabama, 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163; the right of access to the courts, NAACP v Button, 371 US 415, 9 L Ed 2d 405, 83 S Ct 328; or any rights of privacy, cf. Griswold v Connecticut,
> [416 US 8]
>
> 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678; Eisenstadt v. Baird, 405 US 438, 453-454, 31 L Ed 2d 349, 92 S Ct 1029. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be '"reasonable, not arbitrary"' (quoting Royster Guano Co. v Virginia, 253 US 412, 415, 64 L Ed 989, 40 S Ct 560) and bears 'a rational relationship to a [permissible] state objective.' Reed v Reed, 404 US 71, 76, 30 L Ed 2d 225, 92 S Ct 251."

II. Ordinance Is Rationally Related to Legitimate Governmental Objective.

The Town respectfully submits that the Ordinance in question is clearly and rationally related to several legitimate objectives of government, not the least of which is the protection of property values.

> "In addition to health and safety hazards, the considerations of encouragement of the most appropriate use of land and conservation of property values have been found proper justification for regulation of the location and use of mobile homes, as integral to the protection of the general welfare. E.g., Cooper v. Sinclair, 66 So.2d 702 (Fla.), cert. denied, 346 U.S. 867, 74 S.Ct. 107, 98 L.Ed. 377 (1953); Town of New Boston v. Coombs, 111 N.H. 359, 284 A.2d 920 (1971); Duckworth v. City of Bonney Lake, 91 Wash.2d 19, 586 P.2d 860 (1978). Cf. Town of Stonewood v. Bell, 270 S.E.2d 787 (W.Va.1980). . ." Brookside Village v. Comeau, 633 S.E.2d 790 (Tex. 1983).

But, even if it were fairly debatable

as to whether the Town Ordinance is rationally related to a legitimate objective, it must be sustained. The Duggins and Town seem to agree on this point. The proposition has been stated by this Court, and numerous other courts, in different ways but to like effect. This Court has stated that

> ". . . those challenging the legislative judgment must convince the Court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision-maker." Vance v. Bradley, 440 U.S. 93, 111, 59 L.Ed.2d 171, 184, 99 S.Ct. 939, 949 (1979).

This Court has held that a court will not substitute its judgment for that of the local legislature if it is fairly debatable whether the ordinance is rationally related to a legitimate objective. Kelly v. Johnson, 425 U.S. 238, 47 L.Ed.2d 708, 96 S.Ct. 1440

(1976); Euclid v. City of Amber Realty Company, 72 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 14 (1926).

The state courts have also made similar determinations. In the case of Brookside Village v. Comeau, 633 S.E.2d 790 (Tex. 1983), the Court stated it thusly:

> "The party attacking the ordinance bears an 'extra-ordinary burden' to show 'that no conclusive or even controversial or issuable fact or condition existed' which would authorize the municipality's passage of the ordinance."

The North Carolina Court of Appeals in its decision in this case stated it thusly:

> "If any state of facts can be conceived that will sustain the zoning ordinance, the existence of that state of facts must be assumed . . ."

As will be discussed more fully in

the next section of this brief in support of the Town's motion, the facts which sustain the Ordinance are not even debatable—yet, even is they were debatable, the Ordinance if constitutionally sound as per the decision of this Court and the other courts deciding the matter.

III. The Differences Between Mobile Homes (Constructed to Mobile Home Standards) and Modular Homes and "Site Built" Homes (Constructed to Residential Code Standards) Are So Apparent that Judgment on the Pleadings for Town Was Appropriate.

The Jurisdictional Statement of the Duggins appears to rest on the proposition that the courts could not determine that there are sufficient differences between mobile homes and modular homes and "site built" homes to justify different zoning districts without first hearing the evidence of the Duggins. [The Town is not at all certain that

the question of whether or not evidence was required in this case raises a constitutional issue authorizing an appeal to the United States Supreme Court, and respectfully contends that it does not; but, in any event it asserts a position that is contrary to common knowledge.]

To begin with, before this lawsuit was filed, the appellate courts of North Carolina had already determined in other cases that there are sufficient differences between mobile homes and conventional homes to justify zoning ordinance excluding mobile homes from districts permitting conventional homes. In 1980, the North Carolina Court of Appeals held:

> **"We hold that mobile homes are sufficiently different from other types of housing so that there is a rational basis for placing different requirements upon them as was done by Currituck County."**

County of Currituck v. Wiley, 56 N.C.App. 835, 266 S.E.2d, Petition for Discretionary Review denied, 301 N.C. 234, 283 S.E.2d 131 (1980).

Likewise, at the time this case was filed, the Court had before it commentaries supporting the view that there are sufficient differences to justify different zoning districts. For example, Frederick H. Strom, the Editor of the 1981 Zoning and Planning Handbook, makes the following statement at page 179:

> "It is universally recognized and held that mobile homes have characteristics sufficiently different from other kinds of dwellings as to justify different treatment under the law."

The commentary also states, at page 197:

> "In virtually all jurisdictions, the constitutional authority to statutorially differentiate mobile homes from conventional homes and to bar the former while allowing the latter in residential and other districts has been upheld."

Not only did the courts have before them, at the time this case was presented, prior judicial determinations of the differences between mobile homes and conventional homes (including modular homes which must be built to the same standards as residential or conventional homes), the Court had before it the differences prescribed by the definitions within the Town's Ordinance. The Ordinance defines mobile homes as those

> ". . . designed for transportation after fabrication on its own wheels . . .".

On the other hand, the "site built" home and the modular home is not constructed so as to be transported on its own wheels. Still further, the Court had before it, from the definitions stated in the Ordinance, the fact that mobile homes constructed after June 15, 1976 had to be constructed in

accordance with a Mobile Home Code (and those before did not), whereas conventional and modular homes had to be constructed in accordance with the Residential Building Code, and that numerous differences relating to health, safety and general welfare existed.

* * *

Having determined that these differences do in fact exist in the Ordinance and in the standards by which the dwelling units are constructed, the North Carolina Court of Appeals then determined that these differences in fact relate to legitimate objects of government—namely, the protection of the health, safety and general welfare. Specifically, the North Carolina Court of Appeals focused on the effect of mobile homes on property values if scattered throughout the municipality, even in the most restrictive

residential district. The Court stated:

> "The protection of property values in the zoned area is a legitimate governmental objective. We believe that the method of construction of homes may be determined by a city governing board as affecting the price of homes. The prohibition of such buildings is rationally related to the protection of the value of other homes in the area. We cannot interfere with this legislative decision."

Could the governing body of the Town conceivably conclude that the differences between mobile homes and Residential Code homes do in fact affect property values as the North Carolina Court of Appeals determined? The Town respectfully submits that the answer to that question is so apparent that it is not even debatable; but, even if it were debatable, it is certainly conceivable that a governing body could so determine, that such determination would be a

reasonable one, and that the Ordinance is therefore constitutionally valid. (The Town submits that an equal protection question is not even involved in this case inasmuch as all persons similarly situated are treated alike.) The Court was fully justified, we respectfully submit, in determining without hearing the plaintiffs' evidence that the differences do exist (all they had to do was look at the Ordinance), and that those differences could be conceived by the Town Council as affecting property values. Having done so, they lawfully and correctly dismissed the Complaint.

As the North Carolina Court of Appeals suggested, if the Duggins feel that the differences between mobile homes and conventional homes do not adversely affect property values, they

should present that argument to the elected Town Council (which had determined to the contrary) in an effort to convince the Town Council that the Ordinance should be changed. We submit, however, that it will be extremely difficult to convince a local governing body, which usually faces protests anytime one wishes to place a mobile home in a district limited to conventional homes, that the public does not consider mobile homes as adversely affecting property values and as making nearby conventional homes more difficult to sell. No amount of evidence presented by the Duggins in this case could have shown that the Town Council could not have reasonably conceived that mobile homes in the R-20 district would adversely affect property values in those districts.

CONCLUSION

Having determined that there are significant differences between mobile homes constructed pursuant to mobile home standards, and modular or "site built" homes that are not mobile and are constructed according to the North Carolina Residential Building Code; and, having before it ample judicial precedents that these differences justify a local governing body in providing different zones within the municipality for their location and use, the Trial Court correctly allowed the Town's Motion for Judgment on the Pleadings, and the North Carolina Court of Appeals correctly affirmed that decision. The Duggins want the Court to substitute its judgment with respect to the effect of mobile homes on conventional homes in the most restrictive residential

district for that of the legislative body, and this the Court has held is improper. The Town's Council could legitimately determine that differences exist, and could legitimately determine that those differences affect property values (as well as other aspects of health, safety and general welfare). Having done so, the Town respectfully submits that the Duggins' appeal does not raise a substantial federal question and, in any event, that it should be dismissed or the decision of the North Carolina Court of Appeals summarily affirmed.

Respectfully submitted.

Roddey M. Ligon, Jr.

OF COUNSEL:
WOMBLE CARLYLE SANDRIDGE & RICE
Post Office Drawer 84
Winston-Salem, North Carolina 27102
Telephone: (919) 721-3600

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Motion to Dismiss or Affirm was served on opposing counsel on the 28 day of March, 1984.

Roddey M. Lagon Jr.